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Robert E. Bushnell
Suite 300
1522 K Street, N.W.
Washington, DC 20005

EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/995,615
Filing Date: November 29, 2001
Appellant(s): ALBRITTON, KENNETH B.

MAILED
FEB 06 2006
Group 3700

Robert E. Bushnell
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/14/2005 appealing from the Office action mailed 09/11/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,193,034	Fournier	2/2001
6,334,519	Tong	1/2002
4,901,897	Briggs et al.	2/1990

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6,129,254	Yu	10/2000
2,626,689	Davis et al.	7/1950
5,575,362	Franklin et al.	11/1996
5,749,503	Wulf et al.	5/1998
5,054,589	Bomes et al.	10/1991
6,129,254	Yu	10/2000
6,386,414	Kilduff	5/2002

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 41, 43, 45, and 46-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 41, the disclosure does not teach the back wall being folded **only** frontally forward. Claim 27 also previously recites the back wall is also folded substantially flat. This is a new matter rejection.

Regarding claim 46, the disclosure shows that the back wall are always connected to the two sidewalls and the bottom walls. thus, the recitation that the back wall being separate from the other walls is incorrect.

In claim 43, claim 35 defines the bottom member as a separate member. However in claim 43, the claim recites that the back wall folding the top portion of the back wall to the front

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edge of a **bottom portion of the back wall**. Since claim 35 defines the bottom member as a separate member the back wall would be attach to the bottom portion, not the **bottom portion of the back wall**.

2. Claims 41, 45-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 41, "said back wall being folded by the top portion of said back wall being folded" is confusing.

Regarding claim 46, it is unclear how the back wall being separate from the other walls.

3. Claims 39, 40, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Tong (63334519). Tong teaches a backside member, a bottom member and straps. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

4. Claims 24, 25, 26, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier. Tong teaches a hook unit 13, back wall, left and right walls 12, a bottom portion 16 attached to a bottom of the back wall 1, a plurality of compartments on a front surface of the back wall, and at least one strap as claimed.

Tong meets all claimed limitations except for the netted compartments. Fournier teaches that it is known in the art to provide netted compartments. It would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to provide venting for the contents. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

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5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Tong rejection as set forth above, and further in view of Briggs et al. (4901897). Tong meets all claimed limitations except for the straps. Briggs teaches that it is known in the art to provide straps 18 in a folding bag. It would have been obvious for one of ordinary skill in the art to provide first and second extended portions in either Tong or Franklin as taught by Briggs to keep the contents together.

6. Claims 35, and 37 are rejected under 35 U.S.C. 102(a) as being anticipated by Fournier. Fournier teaches a back wall 2, left and right wall, a bottom portion attached to a bottom of the back wall 1, a first wall 2 extending from the bottom portion and assisting in holding a sufficient portion of left and right walls together, a plurality of compartments on a front surface of the back wall comprising of netted material, and at least one strap 5 as claimed. The term backpack does not impart any structure over the bag in Fournier. Kilduff (3686414) teaches the two straps can be carried on the shoulder as a backpack.

7. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689). Davis teaches that it is known in the art to provide strap 52 for hanging garments in a folding bag. It would have been obvious to one of ordinary skill in the art to provide straps in either Fournier or Tong as taught by Davis to provide a place for hanging garments.

8. Claims 24-27, 32, 35, 37, and 39-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589). Franklin teaches a luggage having a foldable back wall with mesh compartments as shown in Fig. 14, and hook 152 that can be attached to an external object, and a

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front portion as shown in Fig. 14. Franklin meets all claimed limitations except for the straps. Wulf teaches that it is known in the art to provide back straps. It would have been obvious to one of ordinary skill in the art to provide back straps in Franklin as taught by Wulf to handle the luggage easily.

Bomes teaches that it is known in the art to provide mesh compartments 60. It would have been obvious to one of ordinary skill in the art to provide mesh compartments in Franklin as taught by Bomes to provide the desired venting.

Regarding claim 45, it would have been obvious to one of ordinary skill in the art to provide the length of the first and second sidewalls greater than a width of the back wall in Franklin as taught by Wulf to provide the desired dimension for the luggage.

9. Claims 24-27, 32, 35, 37, 39-48, 54, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier. It would have been obvious to one of ordinary skill in the art to provide a plurality of netted compartments covering the front portion of the back wall to accommodate a plurality of objects.

Regarding claim 49, the tabs 25 in Fournier are the straps as claimed.

(10) Response to Argument

Applicant's arguments and affidavits filed have been fully considered but they are not persuasive.

A. Rejection of claims 41, 43, 45, and 46-53 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

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Regarding claim 41, the term “only” added specificities to the claims and the recitation contradicts the specification, i.e., the back wall can be disposed upward in the hanging position.

Regarding claim 43, the figures nowhere show the back wall being separate from other walls. The back wall is always attached to the two sidewall and the bottom walls at the rear edges.

Applicant points out that the figures teach these configurations. The specification is completely silence on how the back wall is defined.

B. Rejection of claims 41, 45-53 are rejected under 35 U.S.C. 112, second paragraph.

Regarding claim 41, the recitation “said back wall being folded by the top portion of said back wall being folded” is confusing. Furthermore, it is noted that claim 27 previously recited that the back wall is folded flat. Claim 41 then recites that the back wall is folded only frontally downwards.

Regarding claim 46, it is unclear how the back wall being separate from the other walls. The figures nowhere show the back wall being separate from other walls. The back wall is always attached to the two sidewall and the bottom walls at the rear edges.

C. Rejection of claims 35, and 37 under 35 U.S.C. 102(a) as being anticipated by Fournier.

Applicant asserts that by using Kilduff, there cannot be a 102 rejection, and the Examiner fails to provide a rationale for inherency in Fournier. The examiner submits that the bag in Fournier meets all claimed limitations of the device as claimed in claims 35 and 37, and the

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Kilduff reference was cited in the rejection to illustrate the use of the device of Fournier as a backpack.

With respect to the assertion that the examiner fails to establish inherency of the bag being carried on the shoulder, the examiner submits that the bag in Fournier is capable to be supported on the shoulder. The device of Fournier is directed to a sports equipment bag. Likewise, Kilduff teaches a sports equipment bag being used on the shoulders as a backpack as claimed. Furthermore, the examiner submits that the device of Fournier is capable to be supported on the shoulders, in the very least, on smaller individuals such as children. The claims do not specify the size of the strap and/or what human size to use the device.

D. Rejection of claims 39, 40, and 44 under 35 U.S.C. 102(a) as being anticipated by Tong.

Again applicant asserts that by using Kilduff, there cannot be a 102 rejection. Similar to the reasons as set forth above, the examiner submits that the bag in Tong meets all claimed limitations of the device as claimed in claims 35 and 37, and the Kilduff reference was cited in the rejection to illustrate the use of the device of Tong as a backpack.

Applicant further argues that the present invention includes a zipper while Tong needs multiple zippers. The examiner submits that there is only one single zipper in Tong. It is noted that Tong recites the zipper in two opposite parts (115) and (121) (col. 2, ln. 29). Portion 115 extends continuously on the two sides as shown in Fig. 3 and the top side of panel 111 as shown in Fig. 3. This continuous side of the zipper mate with the other continuous side 121. Portion 121 extends continuously on the two side including one side of the bottom panel 114 (note portion 121 in the bottom edge of bottom panel 114 in Fig. 114. This portion is again shown in Fig. 3.

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Applicant further asserts that Tong fails to teach the back member selectively connecting and disconnecting the back member to the curved side member and the front of the bottom member. It is noted that Fig. 3 in Tong show the device in a hanging position with hook 13. As set forth above, the zipper, which comprises of portions 115 and 121, would allow the device to selectively connecting and disconnecting the back member to the curved side member and the front of the bottom member as claimed.

E. Rejection of claims 24, 25, 26, and 32 under 35 U.S.C. 103(a) as being unpatentable over Tong (6334519) in view of Fournier.

As set forth above, Tong meets all claimed limitations except for the netted compartments. Fournier teaches that it is known in the art to provide netted compartments (Abstract, ln. 10-13; col. 2, ln. 63-65; col. 4, ln. 66). It would have been obvious to one of ordinary skill in the art to provide netted compartments in Tong as taught by Fournier to provide venting for the contents. Regarding claim 24, the examiner submits that the pair of shoulder straps is **disposed a predetermined distance from each other along the longitudinal side of the back surface**. The claim **does not require each strap to extent individually** along the longitudinal side of the back surface.

F. Rejection of claim 38 under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Biggs et al. (2626689).

Biggs teaches that it is known in the art to provide straps 18 for holding the contents, garments in this case, together (col. 2, ln. 59-col. 3, ln. 2). For folding hanging bag, it would

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have been obvious for one of ordinary skill in the art to provide the straps in the hanging bags of either Fournier or Tong to holding contents secured. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would recognize to provide straps of Biggs in either Fournier or Tong since all of these references pertain to the folding/hanging bags

G. Rejection of claim 38 under 35 U.S.C. 103(a) as being unpatentable over either the Fournier or Tong rejection as set forth above, in view of Davis et al. (2626689).

Davis teaches that it is known in the art to provide strap 52 for holding garment as shown in Figs. 7 and Fig. 3, it would have been obvious to one of ordinary skill in the art to provide straps in either Fournier or Tong as taught by Davis to provide a place for hanging garments. In this case, the primary references of Tong and Fournier pertain to folding bags. In a folding bag, Davis teaches that it is known in the art to provide a strap 52 for holding garment. Thus, it would have been obvious for one of ordinary skill in the art to provide the strap 52 in the folding bag of either Fournier or Tong for holding garments.

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H. Rejection of claims 24-27, 32, 35, 37, and 39-45 under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. (5575362) in view of Wulf et al. (5749503), and further in view of Bomes et al. (5054589).

Applicant asserts that Wulf fails to teach the shoulders on a single wall. The examiner submits that the claim does not limit the straps being attached to the back wall. The straps of Wulf are disposed, or position, on the back wall, even though one end is not anchored on the back wall. Furthermore, Wulf even teaches a strap in the pack of 76 with two ends attached to the back panel of a backpack. It would have been obvious for one of ordinary skill in the art to provide this strap arrangement in Franklin.

Applicant further asserts that portion 152 is not a hook for hanging back wall to object. The examiner submits the recitation of the hook for hanging on an external object is an intended use. The recitation does not impart any structure over the hook in Franklin. Furthermore, the claim does not limit the hook not to be a hooked flange. Applicant further asserts that the handles would be in the way of hooking the hook 152 to an external object. The examiner submits that the handle in Franklin is a retractable handle, and one would be able to utilize the hook while the retractable handle is not deployed.

Regarding claim 35, applicant asserts that Franklin fails to teach the limitation "said compartments disposed from a top portion of the front surface of said back wall to a bottom portion of said back wall." The examiner submits that there is a compartment 94 on the back surface for holding the retractable handle. Claim 35 does not require the bottom compartment to be disposed on the front surface. Furthermore, the examiner submits that Bomes teaches a

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plurality of compartments disposed on the back panel. It would have been obvious for one of ordinary skill in the art to provide a plurality of compartments as claimed.

I. Rejection of claims 24-27, 32, 35, 37, 39-48, 54, and 55 under 35 U.S.C. 103(a) as being unpatentable over Franklin et al. in view of either Wulf et al. or Yu (6129254), and further in view of Fournier.

Applicant broadly asserts that the examiner fails to provide a prima facie of obviousness. The examiner submits that Franklin and Fournier are directed to folding hanging bags. Thus to utilize the pockets of Fournier in Franklin would have been obvious to hold a plurality of contents. Furthermore, either Wulf or Yu teaches that it is known in the art to provide shoulder straps for a luggage bag. It would have been obvious for one of ordinary skill in the art to provide the shoulder straps of either Wulf or Yu in Franklin to provide an additional way to transport the luggage bag.

J. Rejection of claims 24-27, 32, 34, 35, 37-48, 54-55 under 35 U.S.C. 103(a) with regard to the affidavit of commercial success.

It is noted that the all affidavits submitted by applicant has been considered. It is noted that the inventor's declaration is not sufficient to overcome a rejection under 35 U.S.C. 102 with respect to the 102 rejections of Fournier and Tong as set forth above. The evidence shown including various awards, press releases, and receipts showing the sale of invention. The examiner submits that these evidences are insufficient to establish a nexus with the claimed invention. With respect to the various awards and press releases, there is no showing that these

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awards, and these press releases are made with any considerations with the prior art as applied above. Furthermore, the examiner submits that these awards and articles are made in view of the invention with all of the features of the disclosed invention. There is no evidence that these awards, press releases are made to a specific feature or a subgroup of features of the invention. With respect to the sale receipts, the showing of the sale receipt is also insufficient to show a nexus between the claimed invention and commercial success. A broad statement asserting that any 103 rejections can be overcome by the showing of commercial success is insufficient. The examiner submits that these evidences fail to show a nexus between the patentability subject matter and the evidence.

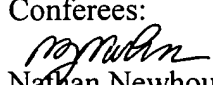
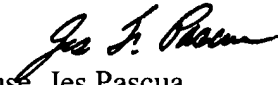
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tri Mai



Conferees:

 
Nathan Newhouse, Jes Pascua